

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN M. STEWART,	)	Case No. 08-3-JLR
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO PROCEED IN FORMA
KING COUNTY JAIL, et al.,	)	PAUPERIS AND MOTION FOR THE
	)	APPOINTMENT OF COUNSEL
Defendants.	)	
	)	

Plaintiff John M. Stewart has filed an application to proceed *in forma pauperis* ("IFP") and a motion for the appointment of counsel in this proposed 42 U.S.C. § 1983 complaint against King County, the King County Jail, Jail Director Reed Holtgeerts, and Director of Public Health David Fleming. Dkt. No. 1, 1-1. The proposed complaint on which this action proceeds seeks damages of over two million dollars for allegedly inadequate medical care and other unlawful prison conditions. Dkt. No. 1-1. After careful consideration of plaintiff's motions, the governing law and the balance of the record, the Court ORDERS as follows:

A. "Three Strikes" Rule of 28 U.S.C. § 1915(g)

Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil litigation without the full prepayment of fees or costs. 28 U.S.C. § 1915(a)(2). However, the Prison Litigation Reform Act ("PLRA") amended § 1915 to preclude this privilege "if the

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01 prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility,  
02 brought an action or appeal in a court of the United States that was dismissed on the grounds  
03 that it is frivolous, malicious, or fails to state a claim upon which relief can be granted, unless  
04 the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The  
05 objective of § 1915(g), also known as the “three strikes” rule, is to further “the congressional  
06 goal of reducing frivolous prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d  
07 1310, 1312 (9th Cir. 1997); *see also Lira v. Herrera*, 427 F.3d 1164, 1174 n.11 (9th Cir.  
08 2005) (similar).

09 B. Plaintiff is Barred From Proceeding IFP Pursuant to 28 U.S.C. § 1915(g)

10 Plaintiff is a prolific litigator. This court has dismissed with prejudice more than three  
11 complaints filed by plaintiff as frivolous and/or failing to state a claim, pursuant to § 1915(g).  
12 *See Stewart v. City of Maple Valley*, C99-237-TSZ (W.D. Wash.); *Stewart v. Sessions*,  
13 C99-199-BJR (W.D. Wash.); *Stewart v. Morgan*, C99-197-JCC (W.D. Wash.). That makes  
14 him a “three strikes” litigant.

15 Furthermore, it is clear that plaintiff has failed to satisfy the “imminent injury”  
16 exception to 1915(g). While plaintiff has alleged a § 1983 prison conditions lawsuit, he has  
17 not alleged, nor is there any indication in the record, that he was under imminent danger of  
18 serious physical injury upon filing his proposed complaint. *See Andrews v. Cervantes*, 493  
19 F.3d 1047, 1052-53 (9th Cir. 2007) (“[T]he exception applies if the danger existed *at the time*  
20 *the prisoner filed the complaint.*”) (emphasis added). This conclusion is further substantiated  
21 by the recent letters plaintiff has mailed to this court, which make no mention of such danger.  
22 *See* Dkt. Nos. 3-4. Accordingly, plaintiff has failed to overcome the bar imposed by 28 U.S.C.  
23 § 1915(g), and may not proceed in this action without paying the full filing fee.

24 It is therefore ORDERED:

25 (1) Plaintiff’s IFP application (Dkt. No. 1) is DENIED;  
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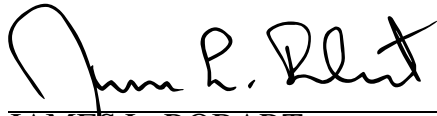
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01 (2) This action shall proceed only if plaintiff pays the applicable filing fee within  
02 thirty (30) days after entry of this Order;

03 (3) As a result, plaintiff's proposed motion for appointment of counsel (Dkt. No. 1-  
04 2) is DENIED as premature; and

05 (4) The Clerk of Court shall furnish copies of this Order to plaintiff and to the  
06 Honorable James P. Donohue.

07 DATED this 19th day of February, 2008.

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11 JAMES L. ROBART  
12 United States District Judge  
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17 Recommended for entry this  
18 19th day of February, 2008.

19 s/ JAMES P. DONOHUE  
20 United States Magistrate Judge  
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